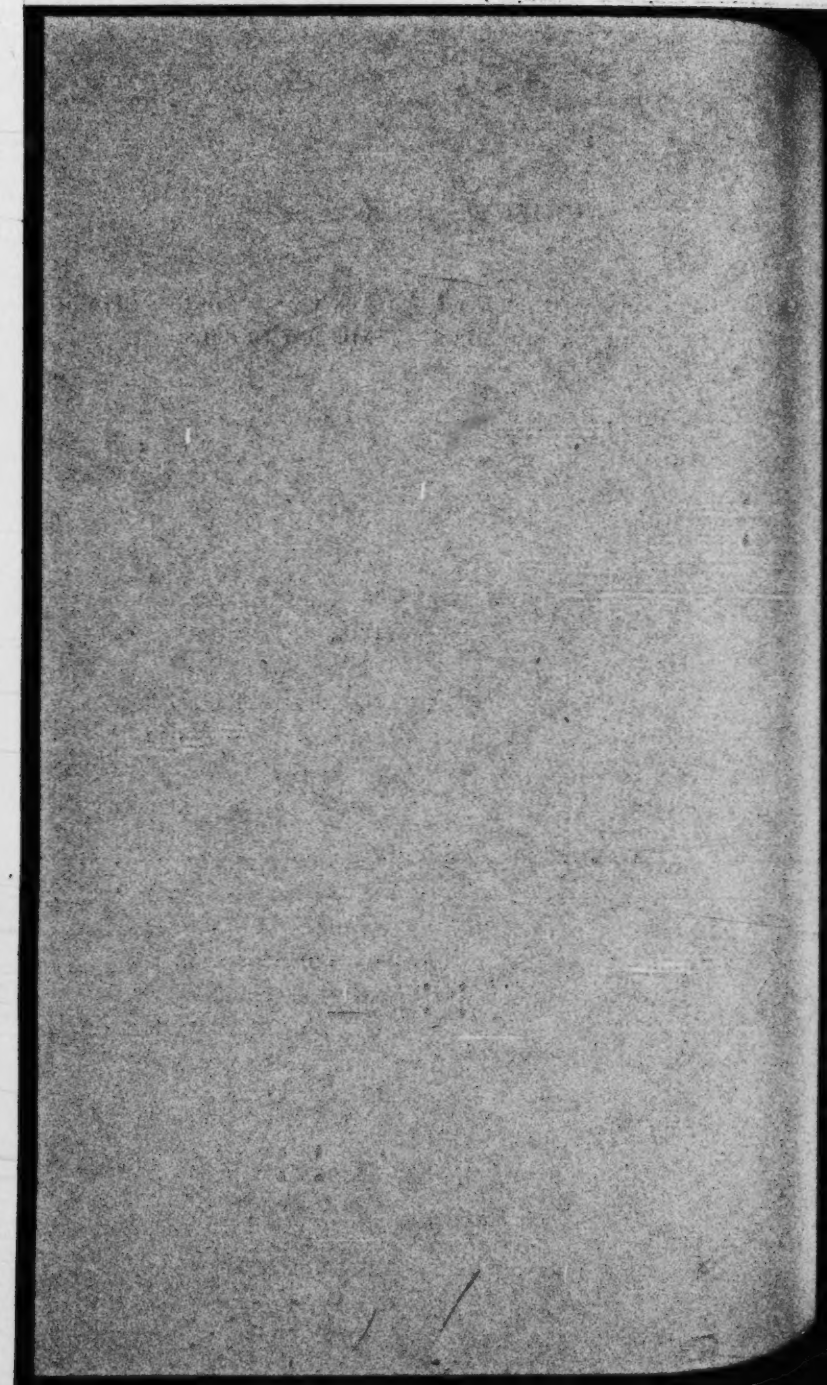

SUBJECT INDEX

TABLE OF AUTHORITIES CITED

IN THE

Supreme Court of the United States

October Term, 1971

No. 71-738

THE MESCALERO APACHE TRIBE, *Petitioner,*

vs.

FRANKLIN JONES, COMMISSIONER OF THE BUREAU OF REVENUE OF THE STATE OF NEW MEXICO, and THE BUREAU OF REVENUE OF THE STATE OF NEW MEXICO, *Respondents.*

Motion for Leave to File Brief Amicus Curiae and Brief for Agua Caliente Band of Mission Indians as Amicus Curiae.

The Agua Caliente Band of Mission Indians hereby respectfully moves for leave to file a Brief *Amicus Curiae* in this case in support of Petitioners, as provided by Rule 42 of the Rules of this Court. The consent of the attorneys for the Petitioners has been obtained. The consent of the attorneys for the Respondents was requested but refused.

The Agua Caliente Band of Mission Indians has been recognized by the Federal Government for nearly

a hundred years as a duly constituted American Indian Tribe. Their reservation is located within the geographical boundaries of the State of California and the County of Riverside. It has sometimes been referred to as "a checkerboard" reservation by reason of the fact that the Federal Government originally granted all of the odd numbered sections of land in the locale to the Southern Pacific Railroad and the even numbered sections to the Agua Caliente Indians.

No significant economic development took place on the Indian sections of land until after 1955 when Congress for the first time authorized long term leasing thereof. Thus, through the vehicle of long term leasing the Indians initiated a program of economic development but as soon as they realized some income therefrom, they encountered a jurisdictional dispute with the County of Riverside who, under California's possessory interest law, decided to tax lessees of Indian trust lands.

The negative impact of such a tax made the Agua Caliente Indians acutely aware of what Chief Justice John Marshall meant when he said, "The power to tax is the power to destroy." As a consequence, the Agua Caliente Indians have sought the assistance of the United States courts in their conflict with the County of Riverside, and in so doing have become aware of the national pattern presently pursued by local governments to interfere with tribal self-government by imposing various types of taxes that tend to destroy the economic development programs undertaken by Indian

...ians. With this in mind, the Agua Caliente Indians feel that their contribution in the form of *Amicus Curiae* should assist this Honorable Court in its determination of a critical legal issue involving Indian Tribes throughout the country.

Wherefore, it is respectfully prayed that this Motion for Leave to File the *Amicus Curiae* and Brief be granted.

RAYMOND C. SIMPSON,
AGUA CALIENTE BAND OF
MISSION INDIANS,
By RAYMOND C. SIMPSON,
Tribal Attorney.

INTEREST OF AMICUS CURIAE.

The Agua Caliente Band of Mission Indians is a duly recognized tribe of American Indians whose reservation is located in the State of California. The lands comprising their reservation are valuable from an appraisal point of view but they can't eat dirt so it must be deemed virtually valueless until they are first economically developed. Toward this end the Indians have made a most diligent effort through active implementation of the long term leasing program authorized by Congress in 1955.

After the passage of nearly sixteen years, these efforts have led to realized income from only five percent of the reservation lands, because they were seriously frustrated and definitely deterred in 1961 when the County of Riverside decided to depart from their "hands off" policy respecting Indian trust lands by imposing a possessory interest tax upon the lessees of their Indian trust lands. The tribe regarded this as an unwarranted and illegal assertion of jurisdiction, so they filed an action against the County known as *The Agua Caliente Band of Mission Indians, et al. v. The County of Riverside*, which is presently pending before this Honorable Court as Docket No. 71-183. Hence, when Respondents undertake to circumvent the sovereignty of the Mescalero Apache Tribe by imposing taxes on a tribal entity, they thereby create a roadblock for the economic development of the Tribe, and as an American Indian Tribe attempting to achieve economic development of its reservation lands, the Agua Caliente Band of Mission Indians therefore has a truly vital interest in the outcome of this case.

Questions Presented.

The questions presented by the case at bar are:

1. Does the taxation invoked by the Respondents constitute an interference with the sovereignty of the Mescalero Apache Tribe?

2. Does this taxation by Respondents frustrate a clear federal policy and program of encouraging Indian tribes to pursue programs designed to produce economic development for the tribes?

REASONS FOR GRANTING THE WRIT.

Amicus joins Petitioners in asserting all the reasons set forth in the Petition for a Writ of Certiorari. The Petition comprehensively discusses the various areas in which the courts below erred, and states excellent reasons why this Honorable Court should review the matter. *Amicus* desires to place special emphasis in this brief on the consequences of the decision below for Indians throughout this nation and its negative impact on Federal Indian policy.

I.

Taxation by the State of New Mexico of the Personal Property of an Indian Tribe or the Imposition of a Privilege Tax Upon an Indian Tribal Enterprise Definitely Frustrates a Clear Federal Policy to Produce Economic Development Upon Indian Reservations.

On July 8, 1970, President Nixon in a Message to Congress, said:

"The destiny of Indians and Indian communities throughout the United States is dependent upon their ability to utilize productively their remaining lands and natural resources. The federal gov-

ernment has acknowledged its trust responsibility to Indians, which arises out of a history of unfortunate relations between the nation and its original inhabitants. In pursuance and fulfillment of this responsibility, the government has afforded certain advantages to its Indian wards. Special treatment and programs for Indians are necessary to compensate for unconscionable dealings with the Indians in the past and to remedy the most alarming present state of abysmal poverty and despair that typifies Indian communities."

It is the primary purpose of the Bureau of Indian Affairs to implement a federal policy of changing this situation. Every year, as part of its proposed budget for the coming fiscal year, the Bureau of Indian Affairs makes the following statement to the House and Senate Appropriation Subcommittees considering its budget request:

"The ultimate goals of the Bureau of Indian Affairs for the Indian people are maximum economic self-sufficiency, equal participation in American life and equal citizenship privileges and responsibilities. The Bureau is working toward the attainment of these goals through two basic programs, one of which is education, and the other is the economic development of reservation resources."

The United States recognized that the reservation system imposed severe limitations on the ability of Indians to maintain a livelihood. Limitation of land area changed traditional patterns of living; confinement to lands which were unfertile and short of water made it difficult to eke out even a subsistence standard of living; and removal to new, often strange areas was

[illegible] of family and community which is the basis [illegible] identity and social structure.

With a gradual decline in direct subsidies and a [illegible] that paternalism would only foster continued dependence, there emerged a Federal policy of [illegible] economic development and self-sufficiency. This policy was implemented by means of several [illegible] and incentives. The future of those programs [illegible] grave doubt if Indians lose by judicial fiat the [illegible] but important margin of advantage Congress has [illegible] them through exemption of their land and its [illegible] from taxation. As this Court noted in *Choate v.* [illegible], 224 U.S. 665 (1912) that tax exemption is a [illegible] right vested in the Indians.

This Court has many times considered whether various forms of state and federal taxation are applicable to Indians. The case at bar, however, presents a serious new question for the Court's decision. This Court's decision will definitely determine the successor or failure of a Federal policy designed to produce economic development and self-sufficiency for Indians and Indian enterprises. The purpose of this Federal policy is clearly profitability of the Indian enterprise, and the measure of the Federal policy's success is the degree of economic improvement in the Indians' economic position. Here, it must be acknowledged that the taxes by the State of New Mexico directly interfere with the Federal policy goal. A matter of such grave importance should command the attention of this Court. *Williams v. Lee*, [illegible] U.S. 217 (1959).

II.

Taxation by the State of New Mexico Upon Personal Property Owned by an Indian Tribe Over the Imposition of a Privilege Tax Upon a Tribally Operated Enterprise Constitutes an Illegal Interference With Tribal Sovereignty.

From the earliest years of the Republic Indian tribes have been recognized as "distinct, independent, political communities." *Worcester v. Georgia*, 6 Pet. 515, 559 (1832), and, as such, qualified to exercise powers of self-government, not by virtue of any delegation of powers from the Federal Government, but rather by reason of their original tribal sovereignty. Thus, treaties and statutes of Congress have been looked to by the courts as limitations upon original tribal powers, or, at most, evidences of recognition of such powers rather than as the direct source of tribal powers. This is but an application of the general principal that "it is only by positive enactments, even in the case of conquered and subdued nations, that their laws are changed by the conqueror." *Wall v. Williamson*, 8 Ala. 48, 51. In fact, in 1959 the United States Supreme Court made it clear that the law had not changed on this subject when it stated "over the years this Court has modified these principles in cases where essential tribal relations were not involved and where the rights of Indians would not be jeopardized, but the basic policy of *Worcester* has remained." *Williams v. Lee*, 358 U.S. 217, 219. The test of whether a State statute may be enforced upon an Indian reservation is "whether the application of that law would interfere with reservation self-government." Organized *Village of Kake v. Egan*, 369 U.S. 60, 67-8, 75 (1962).

Perhaps the most basic principle of all Indian law, supported by a host of decisions, is the principle that those powers which are lawfully vested in an Indian tribe are not, in general, delegated powers granted by express Acts of Congress, but rather inherent powers of a limited sovereignty which has never been extinguished. Each Indian Tribe begins its relationship with the Federal Government as a sovereign power, recognized as such in treaty and legislation. The powers of sovereignty have been limited from time to time by specific treaties and laws designed to take from the Indian tribes control of matters which, in the judgment of Congress, these tribes could no longer be safely permitted to handle. Statutes of Congress, then, must be examined to determine the limitations of tribal sovereignty rather than to determine its sources or its positive content. What is not expressly limited remains within the domain of tribal sovereignty, and therefore properly falls within the statutory category, "powers vested in any Indian tribe or Tribal Council by existing law."

The Acts of Congress which appears to limit the powers of Indian tribes are not to be unduly extended by doubtful inference. What was said in the case of *In re Mayfield*, 141 U.S. 107 is still pertinent:

"The policy of Congress has evidently been to vest in the inhabitants of the Indian country such power of self-government as was thought to be consistent with the safety of the white population with which they may have come in contact, and to encourage them as far as possible in raising themselves to our standard of civilization. We are bound to recognize and respect such policy and to construe the acts of the legislative authority in consonance therewith."

In point of form, it is immaterial whether the powers of an Indian tribe are expressed and exercised through customs handed down by word of mouth or through written constitutions and statutes. In either case the laws of the Indian tribe owe their force to the will of the members of the tribe. The status of Indian nations or tribes, preserving their political entity under the decisions of the Supreme Court, has been summed up in Felix P. Cohen's "Handbook of Federal Indian Law", at page 122, as follows:

"The whole course of judicial decision and the nature of Indian tribal powers is marked by adherence to three fundamental principles: (1) An Indian tribe possesses in the first instance, all the powers of any sovereign state. (2) Conquest renders the tribe subject to legislative powers of the United States and, in substance, terminates the external powers of sovereignty of the tribe, e.g., its power to enter into treaties with foreign nations, but does not by itself affect the internal sovereignty of the tribe, i.e., its powers of local self-government. (3) These powers are subject to qualification by treaties and by express legislation of Congress, save as thus expressly qualified, full powers of internal sovereignty are vested in the Indian tribes and in their duly constituted organs of government."

In *United States v. Kagama*, 118 U.S. 375, 6 S. Ct. 1109, 1112, the Court sums up the status of the Indian in the following language:

"They were, and always have been, regarded as having a semi-independent position when they pre-

served their tribal relation; not as states, not as nations, not as possessed of the full attributes of sovereignty, but as a separate people, with the power of regulating their internal and social relations, thus far not brought under the laws of the Union or of the State within the limits they reside."

The acknowledgment of tribal sovereignty or autonomy by the courts of the United States has not been a matter of lip service to a venerable but out-moded theory. The doctrine has been followed through the most recent cases, and from time to time carried to new implications. Moreover, it has been administered by the courts in a spirit of genuine respect. In fact, the painstaking analysis by the Supreme Court of tribal laws and constitutional provisions in the Cherokee intermarriage cases, (203 U.S. 706) is typical, and exhibits a degree of respect proper to the laws of a sovereign state.

The whole course of congressional legislation with respect to the Indians has been based upon a recognition of tribal autonomy. As was said in a Report of the House Judiciary Committee (prior to the enactment of the United States Code, Title 18, Sec. 548); "Their right of self-government, and to administer justice among themselves, after their rude fashion, even to inflicting the death penalty, has never been questioned." (House Report No. 268, 41st Congress, 3rd Session). In fact, the courts have consistently seen fit to view the status of Indian tribes and the sovereignty possessed by them as being above the sovereignty accorded states.

For instance, in the case of *Native American Church v. Navajo Tribal Council*, 272 F. 2d 131 (1959), the Court said:

> "But as declared in the decisions hereinbefore discussed, Indian tribes are not states. They have a status higher than that of states. They are subordinate and dependent nations possessed of all powers as such only to the extent that they have expressly been required to surrender them by the superior sovereign, the United States."

From the foregoing it is apparent that the Mescalero Apache Tribe possesses that all important attribute of sovereignty known as the power to tax. It must be conceded that this is an essential if self-government by an Indian tribe is to be meaningful and compatible with the recognition evidenced by the many decisions by the United States Supreme Court dealing with the subject. The Tribe can only be deprived of this right by an Act of Congress. Hence, any taxation by the State of New Mexico of personal property owned by an Indian tribe or the imposition of a privilege tax upon an Indian tribal enterprise clearly constitutes an interference with tribal sovereignty, and such taxation therefore should not be allowed.

Conclusion.

Certiorari should be granted in this case because of its profound importance to all Indian tribes seeking economic development and self-sufficiency. Imposition of a personal property tax or a privilege tax by the State of New Mexico upon the wholly owned economic enterprise of the Mescalero Apache Tribe clearly frustrates a Federal policy designed to encourage economic development of reservation resources.

For the reasons set forth in this Brief, the Agua Caliente Band of Mission Indians urge this Honorable Court to grant certiorari so that this vitally important case may be decided on its merits.

Respectfully submitted,

RAYMOND C. SIMPSON,
Attorneys for Agua Caliente Band of Mission Indians as Amicus Curiae.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-738

THE MESCALERO APACHE TRIBE, *Petitioner*,

v.

FRANKLIN JONES, COMMISSIONER OF THE BUREAU OF REVENUE OF THE STATE OF NEW MEXICO, and THE BUREAU OF REVENUE OF THE STATE OF NEW MEXICO, *Respondents*.

In Opposition to Petition for Writ of Certiorari to the Court of Appeals of the State of New Mexico

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JURISDICTION

The Mescalero Apache Tribe is engaged in a business enterprise, a ski resort, which is located primarily on land belonging to the U.S. Forest Service which have been leased to the Tribe for a period of thirty years. The New Mexico Bureau of Revenue assessed the Tribe a compensating tax upon the purchase price of materials used to construct two ski lifts at the ski resort. The Tribe protested the assessment. The compensating

tax imposed on the Tribe was upon the Tribe's storage, use or other consumption in New Mexico of materials purchased from a retailer. Section 72-17-3, N.M.S.A. 1953 Comp., (Repealed July 1, 1967). The compensating tax was not a tax on personal property, but was a tax on the storage, use or other consumption of tangible personal property.

The Tribe reported and paid to the New Mexico Bureau of Revenue a tax on the gross receipts of its business activities pursuant to the provisions of the Emergency School Tax Act, as amended, being §§ 72-16-1 through 72-16-47, N.M.S.A. 1953 Comp., (Repealed July 1, 1967). Subsequent to payment the Tribe claimed for refund of the emergency school tax paid pursuant to § 72-13-40, N.M.S.A. 1953 (Supp. 1969) of the Tax Administration Act.

The protest and claim for refund were denied by a Decision and Order of the Commissioner of Revenue dated December 23, 1970. The matter was appealed to the Court of Appeals of the State of New Mexico pursuant to §§ 16-7-8(F) and 72-13-39, N.M.S.A. 1953 Comp. On August 6, 1971, the Court of Appeals of the State of New Mexico affirmed the decision of the Commissioner of Revenue, by a Court divided on rationale. A timely Motion for Re-hearing was filed and an Order denying the Motion for Re-hearing was entered September 7, 1971. A timely Petition for Writ of Certiorari was filed with the Supreme Court of the State of New Mexico on September 28, 1971, and an order denying the Petition for Writ of Certiorari was entered in this cause by the New Mexico appellate courts.

Respondent contends that this Court does not have jurisdiction of the Petition for Writ of Certiorari

under 28 U.S.C. § 1257(3). The decision of the New Mexico Court of Appeals gives validity to both Petitioner's 1852 treaty with the United States of America, 10 Stat. 979, and The Enabling Act for New Mexico, 36 Stat. 557, ch. 310. Petitioner has not shown that any provision of either the New Mexico Emergency School Tax Act or the New Mexico Compensating Tax Act of 1939 are repugnant to the United States Constitution, treaties or laws of the United States.

Furthermore, no title, right, privilege or immunity of Petitioner under the United States Constitution, treaties or statutes of, or commission held or authority exercised under, the United States has been denied by the decision of the New Mexico Court of Appeals.

ARGUMENT

Petitioner has chosen to engage in business in the State of New Mexico outside the boundaries of its reservation. By so doing, it has entered into competition with other business entities. The fact that the revenue from Petitioner's activities is being used for the educational, social and economic welfare of the Mescalero Apache people is of no significant difference from the use of revenue by other business entities. Petitioner has not shown why taxation of its business activity will lead to its "eventual destruction" as a tribal entity and there is no reason to suppose that this will be the result.

Petitioner contends that Congress has elected to control Petitioner's off-reservation business activities to such a degree that the taxation of its use of tangible personal property and its receipts from the sale of services and property would be repugnant to the Commerce Clause of the United States Constitution,

Article I, Section 8, Clause 3. Congressional control of liquor sales to Indians and cases concerning this control are relied on by Petitioner. See *United States* v. *Holliday*, 70 U.S. (3 Wall) 407, 18 L.Ed. 182 (1866); *United States* v. *43 Gallons of Whiskey*, 93 U.S. (3 Otto) 188, 23 L.Ed. 846 (1876). In discussing the control exercised by Congress, Mr. Justice Miller in the *Holliday* case stated: "...The law before us professes to regulate traffic and intercourse with the Indian Tribes. It manifestly does both. It relates to *buying and selling* and exchanging commodities, which is the essence of all commerce; and it regulates the *intercourse* between the citizens of the United States and those tribes, which is another branch of commerce, and a very important one." (emphasis supplied) (70 U.S. 407, 417). In the transactions which resulted in the imposition of the taxes at issue here, there is no Congressional control or regulation over either sellers to Petitioner of materials or buyers of Petitioner's services or property. Congress has usually not exercised such sweeping regulation as it has done with regard to the commerce of liquor with Indian tribes. Cohen F.S., *Federal Indian Law* (1942), 91. Petitioner has stated at page 15 of its Petition for Writ of Certiorari, "A review of the Stipulation of Facts and the federal statutes and regulations involved, indicate a far greater control here than that imposed on the Indian trader in *Warren Trading Post* v. *Arizona Tax Commission*, ... [380 U.S. 685, 85 S.Ct. 1242, 14 L.Ed. 2d 165 (1965)]." In the *Warren Trading Post* case, Mr. Justice Black stated: "... [T]he commissioner has promulgated detailed regulations prescribing in the most minute fashion who may qualify to be a trader and how he shall be licensed; penalties for acting as a trader without a license; conditions under which government employees may trade with

Indians; articles that cannot be sold to Indians; and conduct forbidden on a licensed trader's premises. . . ." (380 U.S. 685, 689). This type of control is not present in the transactions at issue in this case. Title 25, § 470 of the United States Code provides merely for loans from the Secretary of the Interior to Indian chartered corporations. There is no restriction as to the sellers of materials to the Petitioner or buyers of property or services from Petitioner. Title 25, Part 91 of the Code of Federal Regulations contains no such restriction. The fact that purchases of material which were used to construct the two ski lifts at the ski resort were subject to and were approved by the Bureau of Indian Affiairs (Tr. 3) is probably no different than the measure of control exercised by many lenders of money over borrowers of money. Petitioner's suggestion that the leased lands, upon which the ski resort was located, have the same status as trust lands pursuant to 25 U.S.C. § 465 is without support. There is nothing in the record to indicate that the Secretary of the Interior acquired the lands leased by the Petitioner pursuant to 25 U.S.C. § 465. The record indicates that the ski resort is on lands belonging to the U.S. Forest Service which have been leased to the Tribe for a period of forty years. (Tr. 1) Respondent contends that the distinction between lands leased to an Indian Tribe and lands acquired by the Secretary of the Interior and taken in the name of the United States in trust for an Indian Tribe is obvious and that 25 U.S.C. § 465 is completely irrelevant to this case. Article XI, Section 1 of Respondent's Revised Constitution grants the Mescalero Apache Tribal Council the power to acquire lands or interest in lands without the reservation subject to the laws of the United States and the regulations of the Secretary of the Interior. (Tr. 9) The leased

lands were not granted or confirmed to the Petitioner by any act of Congress but rather they were leased from the U.S. Forest Service.

The decision of the New Mexico Court of Appeals does not interfere with Petitioner's right to self-government. The operation of the ski resort is a proprietary function performed by Petitioner and because the function is proprietary, Petitioner is not immune from the taxes which have been imposed. Compare *City of High Point* v. *Duke Power Company,* 120 F.2d 666 (4th Cir. 1941); *State Tax Commission* v. *City of Logan,* 88 Utah 406, 54 P.2d 1197 (1936); *City of Phoenix* v. *State,* 53 Ariz. 28, 85 P.2d 56 (1938). Furthermore, there is nothing in the record to indicate interference with Tribal self-government. Petitioner's contention that the effect of the Court of Appeals' decision is to restrict Indian tribal choices of business ventures and the location of these ventures is unsupported by the record. Even if the Tribe decided to locate such business ventures on the reservation rather than outside the reservation, there is no indication that the influence state taxation might have on this decision would be an interference with Tribal self-government. In *Organized Village of Kate* v. *Egan,* 360 U.S. 60, 82 S.Ct. 562, 7 L.Ed.2d 573 (1962), it was recognized by this Court that fishing rights are of vital importance to Indians in Alaska. (369 U.S. 60, 66; 7 L.Ed.2d 573, 578) It is reasonable to assume that the revenue raised from fishing made these rights important and that this revenue would be used for the educational, social and economic welfare of the Organized Village of Kate and the Aragon Community Association. Even though these facts are implicit in the opinion of this Court, it was decided that state regulation of off-reservation fishing

rights did not impinge on treaty-protected reservation self-government.

The Petitioner is not a federal instrumentality under the tests set forth for determining a federal instrumentality in Justice Marshall's dissenting opinion in *Agricultural Nat. Bank.* v. *Tax Commission,* 392 U.S. 339, 88 S.Ct. 2173, 20 L.Ed.2d 1138 (1968), and cases cited therein. The loan to the Petitioner under 25 U.S.C. § 470 was to be for the purpose of promoting economic development of ". . . such tribes and of their members, . . ." but this does not indicate that Petitioner thereby became a federal instrumentality. "Economic development" is an indefinite phrase and could refer to any money or benefit received by the Tribe or any member of the Tribe. In *Leahy* v. *State Treasurer of Oklahoma,* 297 U.S. 420, 56 S.Ct. 507, 80 L.Ed. 771 (1936), the fact that a member of an Indian Tribe was taxed by a state on his share of the income from the mineral resources of the Tribe did not amount to taxation of a federal instrumentality. Respondent contends that if the income of the Tribal member in the *Leahy* case had resulted indirectly from a loan pursuant to 25 U.S.C. § 470 the tribal member would still not be a federal instrumentality. The fact that the Petitioner in this case used materials and had receipts from selling property or services because of a loan under § 470 does not indicate that Petitioner became a federal instrumentality. As has previously been argued, Respondent contends 25 U.S.C. § 465 is irrelevant to this case.

There is nothing in the record to support Petitioner's statement on page 14 of its Petition for Writ of Certiorari that ". . . [T]his money would not be returned

to the Tribe in the form of educational benefits as the federal government presently meets the cost of educating the Indian tribes. 25 CFR pt. 33. . . ." Nowhere in Title 25, Part 33 of the Code of Federal Regulations is there an indication that the federal government meets the complete costs of educating the Indian tribes. Section 33.4(a) of Part 33 refers to the expenditure of monies appropriated by Congress under contracts with state authorities. Section 33.4(b) states in part: ". . . This Federal assistance program shall be based on the need of the district for *supplemental funds* to maintain an adequate school after *evidence of reasonable tax effort* and receipt of *other aids to the district* without reflection on the status of Indian children." (emphasis supplied)

Petitioner contends that the portion of the New Mexico Enabling Act of June 20, 1910, 36 Statutes at Large, Chapter 310, Section 2, Clause 2, which provides that the state is not precluded from taxing, as other lands and other property are taxed, any lands and other property outside an Indian Reservation owned or held by any Indian, does not apply to Indian Tribes. Respondent submits that this provision does apply to Indian Tribes because of the next phrase in the Act which refers to "Indian [redacted] Indians". It would have been unnecessary for Congress to refer to "Indians" with regard to lands granted, acquired or confirmed by Act of Congress if the preceding phrase had applied only to an individual Indian. Respondent contends that the term "Indian" refers to Indian Tribes as well as an individual Indian.

United States v. *Rickert*, 188 U.S. 432, 28 S.Ct. 478, 47 L.Ed. 532 (1903), which is relied on by Petitioner,

concerns lands allotted to Indians and personal property issued by the United States to Indians holding these allotments which property was used on the allotted lands. These lands were allotted under a general allotment Act of Congress. The South Dakota Enabling Act, 25 Stat. 677, and the South Dakota Constitution, Article 22, subd. 2, allowed taxing, as other lands, "... any lands owned or held by any Indian who had severed his tribal relation, and has obtained from the United States, or any person, a title thereto by patent or other grant." South Dakota had imposed a tax on allotted lands and personal property relying on its Enabling Act and Constitution. This Court found that the patent or grant referred to had not been issued and that the tax was improper. There is nothing in the record to indicate that Petitioner was operating on allotted lands. The *Rickert* case does not support Petitioner's position.

CONCLUSION

Respondent respectfully submits that the petition for writ of certiorari be denied.

Respectfully submitted,

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